

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, ) 3:04-cr-00082-HDM (VPC)  
Plaintiff, )  
vs. ) ORDER  
HORATIO DEMARIOUS SMITH, )  
Defendant. )  
-----)

Before the court is defendant's motion for equitable tolling (#121) in which defendant sought to equitably toll the statute of limitations applicable to a petition to vacate pursuant to 28 U.S.C. § 2255. The United States responded (#122), and defendant replied (#123). On March 4, 2008, defendant/petitioner Smith filed his petition under § 2255 (Civil Docket #: 3:08-cv-00122-HDM). Defendant's motion for equitable tolling (#121) is therefore denied as moot.

**IT IS SO ORDERED.**

DATED: This 12th day of March, 2008.

*Howard D. McKibben*

UNITED STATES DISTRICT JUDGE